

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court District Court of Minnesota on the following

☒ Trademarks or ☐ Patents. ( ☐ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. 11cv00504	DATE FILED 3/1/2011	U.S. DISTRICT COURT District Court of Minnesota
PLAINTIFF ARABICA FUNDING, INC., et al.		DEFENDANT THE UNLIMITED/ALASKA HATS et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,839,091		
2 1,841,047		
3 2,609,319		
4 2,609,338		
5 2,703,741		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 2,703,747			
2 3,533,290			
3 3,878,893			
4 3,878,886			
5 3,878,884			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court District Court of Minnesota on the following

☒ Trademarks or ☐ Patents. ( ☐ the patent action involves 35 U.S.C. § 292.);

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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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ARABICA FUNDING, INC. and  
CARIBOU COFFEE COMPANY, INC.,

Civil Action No. \_\_\_\_\_

Plaintiffs,

**COMPLAINT**

vs.

THE UNLIMITED/ALASKA HATS &  
APPAREL; ROGER W. ZAK; and  
RONALD MACLURE d/b/a/  
THE COFFEE ROASTERY,

**Jury Trial Demanded**

Defendants.

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Plaintiffs Arabica Funding, Inc. ("Arabica") and Caribou Coffee Company, Inc. ("Caribou Coffee") (collectively, "Plaintiffs"), for their Complaint against Defendants The Unlimited/Alaska Hats & Apparel ("The Unlimited"), Roger W. Zak ("Zak"), and Ronald Maclure, d/b/a The Coffee Roastery ("Maclure") (each a "Defendant," collectively, "Defendants"), state as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. This is an action arising from Defendants' infringement of Plaintiffs' trademark rights. The claims alleged in this Complaint arise under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; 28 U.S.C. § 2201; Minn. Stat. §§ 333.18 *et seq.*; and the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-325D.48.

2. Plaintiff Caribou Coffee is a Minnesota corporation with its principal place of business in Brooklyn Center, Minnesota.

3. Plaintiff Arabica is a Delaware corporation with its principal place of business in Melville, New York. Arabica is the owner, and Caribou Coffee the exclusive licensee, of the trademark rights supporting this action.

4. Defendant The Unlimited is an Alaska partnership with its principal place of business in Palmer, Alaska. The Unlimited claims trademark rights, which Plaintiffs dispute, in the mark CARIBREW for coffee and other products. The Unlimited has also sold coffee, coffee mugs, and other goods bearing that trademark and has purported to license use of the CARIBREW trademark to third parties.

5. Defendant Zak is an individual residing in the state of Alaska, and a member of The Unlimited partnership. Zak is the owner of the domain names caribrew.com and caribrewcoffee.com, which infringe upon the rights of Plaintiffs.

6. Maclure is an individual residing in the state of Alaska. On information and belief, Maclure is the sole proprietor of a business based in Palmer, Alaska called The Coffee Roastery. Through a verbal agreement and business relationship with The Unlimited, Maclure is manufacturing and selling packages of coffee bearing the infringing CARIBREW mark.

7. This Court has subject matter jurisdiction over the federal claims under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the claims arising under state law under 28 U.S.C. § 1367. Because Plaintiffs and Defendants are citizens of different states and the amount in controversy exceeds \$75,000, this Court also has jurisdiction over all claims in this action under 28 U.S.C. § 1332.

8. This court has personal jurisdiction over Defendants because

- (a) Defendants have sold into this district coffee bearing infringing trademarks;
- (b) Defendants offer for sale coffee bearing infringing marks through an interactive website accessible in this district, which website allows and invites shipment into this state of products bearing infringing marks; (c) Zak has registered domain names which incorporate the infringing marks and direct users to the site where infringing products are sold; and (d) The Unlimited contracted with a Minnesota company in 1997 and again in 2010 to print labels bearing such infringing marks. Defendant the Unlimited has also sought to license its purported trademark rights to one or more companies based in Minnesota, including at least Caribou Coffee.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this district.

#### **PLAINTIFFS' TRADEMARK RIGHTS**

10. Since its founding in 1992, Caribou Coffee has grown to become the second-largest premium coffeehouse operator in the United States, based on number of coffeehouses. Caribou Coffee boasts some 410 company-owned coffeehouses and 129 franchised and licensed locations in approximately sixteen states and more than eight foreign countries. In addition to providing beverages, food, and other CARIBOU COFFEE-branded products in these locations, the company's products are offered for sale in third-party grocery and other retail stores in some forty states. Through Internet sales, these products are sold in all fifty states.

11. Since 1992, Caribou Coffee continuously has used the trademarks CARIBOU, CARIBOU COFFEE, and CARIBOU COFFEE & Leaping Caribou Design (collectively, the “CARIBOU Marks”) to identify the source of the goods and services that it provides.

12. Since 1992, Caribou Coffee has continuously used the trade name CARIBOU COFFEE.

13. Arabica owns and Caribou Coffee licenses and uses the following federal registrations, among others, for the CARIBOU Marks: (a) CARIBOU COFFEE, Registration No. 1,839,091 (registered on June 7, 1994); (b) CARIBOU COFFEE & Leaping Caribou Design, Registration No. 1,841,047 (registered on June 21, 1994); (c) CARIBOU COFFEE, Registration No. 2,609,319 (registered on August 20, 2002); (d) CARIBOU COFFEE & Leaping Caribou Design, Registration No. 2,609,338 (registered on August 20, 2002); (e) CARIBOU COFFEE, Registration No. 2,703,741 (registered on April 8, 2003); (f) CARIBOU COFFEE & Leaping Caribou Design, Registration No. 2,703,747 (registered on April 8, 2003); (g) CARIBOU, Registration No. 3,533,290 (registered on November 18, 2008); (h) CARIBOU COFFEE & Leaping Caribou with Shield Design, Registration No. 3,878,893 (registered November 23, 2010); (i) CARIBOU COFFEE & Leaping Caribou with Shield Design, Registration No. 3,878,886 (registered November 23, 2010); (j) CARIBOU COFFEE & Leaping Caribou with Shield Design, Registration No. 3,878,884 (registered November 23, 2010); (k) CARIBOU COFFEE & Leaping Caribou Design, Registration No. 2,540,265

(registered February 19, 2002); and (l) CARIBOU COFFEE, Registration No. 2,563,579 (registered April 23, 2002).

14. Arabica owns and Caribou licenses and uses the following federal applications, among others, for the CARIBOU Marks: (a) CARIBOU COFFEE & Leaping Caribou with Shield Design, Serial No. 77/899,059; (b) CARIBOU COFFEE & Leaping Caribou with Shield Design, Serial No. 77/898,304; (c) CARIBOU COFFEE & Leaping Caribou with Shield Design, Serial No. 77/898,365; (d) CARIBOU COFFEE & Leaping Caribou with Shield Design, Serial No. 77/898,282; (e) CARIBOU COFFEE & Leaping Caribou with Shield Design, Serial No. 77/899,857; and (f) CARIBOU COFFEE & Leaping Caribou with Shield Design, Serial No. 77/899,883.

15. Plaintiffs continuously have used the CARIBOU Marks since at least as early as 1992. Plaintiffs have obtained and now possess valuable goodwill in all of the CARIBOU Marks. Plaintiffs' exclusive rights in the CARIBOU Marks are valid, subsisting, and with respect to several of the registered CARIBOU Marks, incontestable.

16. As a result of Plaintiffs' successful marketing and promotion of its products and services under the CARIBOU Marks, those marks have become famous in Minnesota and throughout the United States for Caribou Coffee's products and services.

17. Since May 2007, Caribou has continuously used the mark CARIBREW CLUB for a bonus incentive program for customers of its coffeehouses in select U.S. markets. Arabica owns, and Caribou licenses, Federal Trademark Registration No. 3,454,826 for that mark for "Retail Store Services in the Field of Coffee, Tea, Coffee and

Tea Brewing Accessories, Food, Candy, and Beverageware Featuring a Bonus Incentive Program for Customers” (registered June 24, 2008).

18. Caribou is the owner of more than fifty domain names including the terms CARIBOU, CARIBOU COFFEE, CARIBREW, or similar terms, including among many others: cariboucoffee.com, cariboucoffee.biz, caribou-coffee.com, caribou-coffee.biz, cariboucoffee.info, caribou-coffee.info, cariboucoffee.net, caribou-coffee.net, cariboucoffee.org, caribou-coffee.org, cariboucoffee.us, caribou-coffee.us, cariboucoffeeclub.com, cariboucoffeecompany.com, cariboucoffeehouses.com, cariboucoffeestore.com, caribrewclub.com, caribucoffee.com, contactcaribrewclub.com, mycaribou.com, and mycariboucoffee.com.

### **DEFENDANTS’ INFRINGEMENT**

19. In or around 1997 – five years after Plaintiffs’ rights were established in the CARIBOU Marks for identical goods – Defendant The Unlimited began selling coffee in packaging with labels bearing the phrase “Caribrew ‘Blended for those on the Move.’” The labels also bore a depiction of two stylized caribou animals.

20. Initially, The Unlimited’s coffee was roasted and packaged by Defendant Maclure as the sole proprietor of a company called Bustin’ Coffee.

21. Defendants’ use of the CARIBREW Mark in 1997, 1998, and 1999 was minimal and geographically limited.

22. If The Unlimited ever established any rights in the CARIBREW Mark for coffee, those rights were abandoned by The Unlimited in or around 1999.



23. From April 1999 until at least December 2009, The Unlimited sold no coffee bearing the CARIBREW Mark.

24. In or around late 2009 or early 2010, The Unlimited again began using the mark CARIBREW, and several slogans incorporating the CARIBREW Mark, including “Caribrew ‘Coffee Blended for Those on the Move’” and “Caribrew ‘Coffee Brewed for Those on the Move.’” In March 2010, The Unlimited contracted with a company in Minnesota to print more than 10,000 coffee labels bearing the infringing CARIBREW Marks, again used in conjunction with the depiction of two stylized caribou animals.

25. In connection with its resumption of use, The Unlimited entered into a verbal license agreement with Defendant Maclure, now doing business as The Coffee Roastery, which allows Maclure to use the infringing CARIBREW Marks.

26. The Unlimited and Maclure have sold and continue to sell whole beans and ground coffee in packaging with labels bearing the CARIBREW Marks, at least: (a) direct to consumers; (b) through a website operated by Maclure; (c) through Alaskan locations of discount chain Walmart and grocery chain Fred Meyer, and (d) through individual gift shops and novelty stores operating within and outside the state of Alaska.

27. The Unlimited also has sold coffee mugs bearing the infringing marks.

28. On or around November 27, 2009, having full knowledge of the CARIBOU Marks and CARIBREW CLUB trademark registration owned by Plaintiffs, Zak registered the domain names CARIBREW.com and CARIBREWCOFFEE.com for use by The Unlimited. These domain names have been connected to the website of Defendant Maclure’s Coffee Roastery business since sometime in 2010.

29. Defendants' use of the CARIBREW mark on or in connection with goods that are identical and closely related to goods and services offered by Plaintiffs under the CARIBOU Marks and the CARIBREW CLUB mark is likely cause confusion, or to cause mistake, or to deceive consumers into a belief that Defendants' products are sponsored by Plaintiffs.

30. The similarity of Plaintiffs' and Defendants' respective marks has led to at least one instance of actual consumer confusion.

31. On information and belief, the coffee sold by Defendants under the CARIBREW mark is a low quality product. Its potential association with Plaintiffs tarnishes the goodwill in Plaintiffs' CARIBOU Marks.

32. In addition to the CARIBREW mark, The Unlimited, after being fully apprised of Plaintiffs' trademark rights, in 2010 began attempts to license the mark CARIBREWSKI for beer or root beer, along with a label bearing that mark. The Unlimited has offered to license this mark to Plaintiffs and, on information and belief, to unrelated businesses including at least The Coca-Cola Company.

33. Use of or licensing the CARIBREWSKI mark for beer or root beer would be likely to cause confusion, or to cause mistake, or to deceive consumers into a belief that products bearing that mark are sponsored by Plaintiffs. The Unlimited's attempts to use or license use of that mark therefore infringe Plaintiffs' trademark rights.

**DEFENDANTS' APPLICATIONS AND THE PARTIES' PROCEEDINGS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

34. On or around November 23, 2009, The Unlimited, having full knowledge of Plaintiffs' CARIBOU and CARIBREW CLUB federal trademark registrations, filed in the United States Patent and Trademark Office ("PTO") an application bearing serial number 77/879,326 to place the mark CARIBREW, for coffee and a long list of coffee-related products, on the Principal Register (the "CARIBREW Application").

35. Through counsel, Plaintiffs demanded that The Unlimited withdraw this application and cease any use of the CARIBREW Mark. The Unlimited refused.

36. The CARIBREW Application was refused by the PTO, citing a likelihood of confusion with Plaintiffs' CARIBREW CLUB trademark. The PTO also granted a letter of protest with regard to Plaintiffs' CARIBOU marks.

37. On or around April 20, 2010, The Unlimited filed a petition to cancel Plaintiffs' registration of the CARIBREW CLUB trademark, resulting in the administrative law proceeding before the Trademark Trial and Appeal Board ("TTAB") that is identified by the number 92052344 (the "'344 Cancellation Proceeding"). The PTO's review of the CARIBREW Application was suspended pending the outcome of the '344 Cancellation Proceeding.

38. On December 24, 2010, The Unlimited filed in the PTO an application bearing serial number 85/205,541 to register the mark CARIBREWSKI for beer (the "CARIBREWSKI Application").

39. In discovery during the '344 Cancellation Proceeding, Plaintiffs learned the extent of Defendants' actual current use of the CARIBREW mark for coffee. Because the TTAB lacks authority to enjoin Defendants' actual use of the infringing CARIBREW mark or future use of the infringing CARIBREWSKI mark, Plaintiffs have elected to commence litigation before this Court as the only way to preserve and protect their rights and for the sake of more efficiently resolving all parties' claims in a single proceeding. Plaintiffs will move the TTAB, in accordance with that administrative tribunal's governing rules and standard practice in such circumstances, to suspend the '344 Proceeding pending the outcome of this litigation.

**FIRST CLAIM FOR RELIEF**

**Federal Trademark Infringement – Lanham Act § 32, 15 U.S.C. § 1114**

40. Plaintiffs restate and reallege paragraphs 1 through 39.

41. Arabica is the owner of the federally registered CARIBOU Marks and CARIBREW CLUB mark, which Caribou Coffee uses under license.

42. Defendants' use of the CARIBREW mark and use of the CARIBREWSKI mark are likely to cause confusion, or to cause mistake or to deceive, and constitute trademark infringement under Lanham Act § 32, 15 U.S.C. § 1114.

43. Defendants' actions have caused, and will continue to cause, irreparable harm to Plaintiffs unless enjoined.

44. Defendants' unlawful past and proposed actions are profiting and will continue to profit The Unlimited. The Unlimited's actions are causing and will cause Plaintiffs monetary damage in amounts presently unknown but to be determined at trial.

**SECOND CLAIM FOR RELIEF**

**Federal Unfair Competition – Lanham Act § 43(a), 15 U.S.C. § 1125(a)**

45. Plaintiffs restate and reallege paragraphs 1 through 44.

46. Arabica owns common law rights in the CARIBOU Marks and the CARIBREW CLUB mark, which Caribou Coffee uses under license.

47. Defendants' use of the CARIBREW mark and of the CARIBREWSKI mark is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities by Plaintiffs.

48. Defendants' actions constitute unfair competition, false designation of origin, and palming off in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

49. Defendants' actions have caused, and will continue to cause, irreparable harm to Plaintiffs unless enjoined.

50. Defendants' unlawful past and proposed actions are profiting and will profit Defendants. Defendants' actions are causing and will cause Plaintiffs monetary damage in amounts presently unknown but to be determined at trial.

**THIRD CLAIM FOR RELIEF**

**Declaratory Judgment and Determination of Right to Registration –  
28 U.S.C. §§ 2201-02 and Lanham Act §§ 2 and 37, 15 U.S.C. § 1052-1119**

51. Plaintiffs restate and reallege paragraphs 1 through 50.

52. Arabica owns common law and federally registered rights in the CARIBOU Marks and the CARIBREW CLUB mark, which Caribou Coffee uses under license.

53. Plaintiffs used the CARIBOU Marks years prior to any use by Defendants of the CARIBREW and CARIBREWSKI marks, and Plaintiffs have never abandoned such use.

54. Plaintiffs used the CARIBREW CLUB mark prior to Defendants' resumption of use of their CARIBREW mark, and Plaintiffs have never abandoned such use.

55. Plaintiffs registered the CARIBOU Marks and the CARIBREW CLUB mark prior to the filing date of both the CARIBREW Application and the CARIBREWSKI Application, and several of the registrations for Plaintiffs' CARIBOU Marks have become incontestable.

56. Caribou Coffee has used the CARIBOU COFFEE trade name since 1992, years prior to any use by defendants of the CARIBREW and CARIBREWSKI marks, and Caribou Coffee has never abandoned such use.

57. Neither The Unlimited nor any licensee has ever used the mark CARIBREW for artificial coffee, coffee substitutes, or tea, although the CARIBREW Application includes a sworn statement signed by Zak and another member of the partnership that the mark CARIBREW was currently in use for those items.

58. The Unlimited's attempt to register the infringing marks CARIBREW and CARIBREWSKI creates an actual controversy between the parties under 28 U.S.C. § 2201.

59. This Court has power over the federal registration of the CARIBREW and CARIBREWSKI marks under Lanham Act § 34, 28 U.S.C. § 1119, since this litigation involves registered marks.

60. Plaintiffs are entitled to a declaration that The Unlimited is not entitled to registration of the CARIBREW and CARIBREWSKI marks, at least because the marks so resemble Plaintiffs' CARIBOU Marks and CARIBREW CLUB mark, as to be likely, when used on or in connection with the goods identified in the registrations, to cause confusion, or to cause mistake, or to deceive, in violation of Lanham Act § 2(d), 15 U.S.C. § 1052(d).

#### **FOURTH CLAIM FOR RELIEF**

##### **Federal Trademark Dilution – Lanham Act § 43(c), 15 U.S.C. § 1125(c)**

61. Plaintiffs restate and reallege paragraphs 1 through 60.

62. Arabica is the owner of the CARIBOU Marks, which Caribou Coffee uses under license, and which are distinctive and famous among the consuming public of the United States.

63. Defendants' use of the CARIBREW mark and of the CARIBREWSKI mark is diluting and will dilute the fame of the CARIBOU Marks and is tarnishing and will tarnish the reputation of those marks, thus constituting dilution under Lanham Act § 43(c), 15 U.S.C. § 1125(c).

64. Defendants' current use of the CARIBREW mark commenced after the date of enactment of the Trademark Dilution Revision Act of 2006, since Defendants

abandoned any rights they had in the trademark prior to that date and commenced such use again only after that date.

65. Defendants' actions have caused, and will continue to cause, irreparable harm to Plaintiffs unless enjoined.

66. Defendants' unlawful past and proposed actions are profiting and will profit Defendants. Defendants' actions are causing and will cause Plaintiffs monetary damage in amounts presently unknown but to be determined at trial.

#### **FIFTH CLAIM FOR RELIEF**

##### **Anticyberpiracy Consumer Protection Act – 15 U.S.C. 1125(d)**

67. Plaintiffs restate and reallege paragraphs 1 through 66.

68. Arabica is the owner of the federally registered CARIBOU Marks and CARIBREW CLUB mark, which Caribou Coffee uses under license.

69. The CARIBOU Marks are famous and the CARIBREW CLUB mark is distinctive.

70. Defendants, with a bad faith intent to profit from those marks, registered, trafficked in, and/or used the domains names CARIBREW.com and CARIBREWCOFFEE.com, which domain names are confusingly similar to and/or dilutive of Plaintiffs' marks.

71. Defendants' actions have caused, and will continue to cause, irreparable harm to Plaintiffs unless enjoined.



**SIXTH CLAIM FOR RELIEF**

**Minnesota Trademark Dilution – Minn. Stat. § 333.285**

72. Plaintiffs restate and reallege paragraphs 1 through 71.

73. Arabica is the owner of the CARIBOU Marks, which Caribou Coffee uses under license and which are distinctive and famous in the state of Minnesota.

74. Defendants' use of the CARIBREW trademark and proposed use of the CARIBREWSKI trademark is diluting and will dilute the fame of the CARIBOU Marks and constitutes trademark dilution under Minn. Stat. § 333.285.

75. The Unlimited's actions have caused, and will continue to cause, irreparable harm to Plaintiffs unless enjoined.

**SEVENTH CLAIM FOR RELIEF**

**Minnesota Uniform Deceptive Trade Practices Act – Minn. Stat. § 325D.44.**

76. Plaintiffs restate and reallege paragraphs 1 through 75.

77. Defendants' actions are causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods, as defined by Minn. Stat. § 325D.44.

78. Defendants have willfully engaged such deceptive trade practices, knowing them to be deceptive.

79. Defendants' actions have caused, and will continue to cause, irreparable harm to Plaintiffs unless enjoined.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray that the Court enter judgment in favor of Plaintiffs and against Defendants:

(a) Immediately, preliminarily, and permanently enjoining and restraining Defendants and their officers, agents, subsidiaries, servants, partners, employees, attorneys and all others in active concert or participation with Defendants, from using Plaintiffs' CARIBOU Marks or CARIBREW CLUB mark, the CARIBREW mark, the CARIBREWSKI mark, or any confusingly similar designations, whether alone or in combination with other words or designs, as trademarks, service marks, trade name components, domain names, or otherwise;

(b) Entering Declaratory Judgment that The Unlimited has no right to pursue the CARIBREW Application and CARIBREWSKI Application before the PTO and declaring those applications invalid, pursuant to 28 U.S.C. §§ 2201-02 ;

(c) Certifying to the Director of the PTO the Court's order regarding The Unlimited's lack of right to registration of its CARIBREW and CARIBREWSKI marks;

(d) Requiring The Unlimited to immediately and expressly abandon the CARIBREW Application and the CARIBREWSKI Application;

(e) Requiring Defendants to deliver up for destruction all marketing materials, labels, packaging, and other items in their individual or collective possession or control that bear names or marks that infringe Plaintiffs' CARIBOU Marks or CARIBREW CLUB mark;

(f) Requiring Defendants to account for and pay over to Plaintiffs their profits from all sales or other business transactions relating to products or services bearing or used in association with the CARIBREW or CARIBREWSKI mark and all damages sustained by Plaintiffs;

(g) Requiring Zak to immediately transfer to Caribou Coffee ownership of the infringing domain names CARIBREW.com and CARIBREWCOFFEE.com;

(h) Increasing the amount of damages and/or profits awarded Plaintiffs as appropriate pursuant to 15 U.S.C. § 1117(a); Minn. Stat. § 333.29; and other applicable law;

(i) Awarding Plaintiffs reasonable attorney fees, costs, expenses, and interest pursuant to 15 U.S.C. § 1117(a); Minn. Stat. § 325D.45; and other applicable law; and

(j) Awarding Plaintiffs such other relief as the Court may deem just and proper.

DORSEY & WHITNEY LLP

DATED: March 1, 2011

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**ATTORNEYS FOR PLAINTIFFS**

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

ARABICA FUNDING, INC. and CARIBOU COFFEE COMPANY, INC.

(b) County of Residence of First Listed Plaintiff Suffolk Co., N.Y.  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Heather D. Redmond, Dorsey & Whitney, LLP, 50 South 6th Street, Suite 1500,  
Minneapolis, MN 55402 (612) 340-6343

**DEFENDANTS**

THE UNLIMITED/ALASKA HATS &amp; APPAREL, et al.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S. § 1051, et. seq.

Brief description of cause:  
Trademark infringement; unfair competition; dilution

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ injunction and damages

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/01/2011

SIGNATURE OF ATTORNEY OF RECORD

s/Heather D. Redmond

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.